



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

March 7, 1991

Ms. Karren S. Price
District Attorney
123rd Judicial District
Shelby & Panola Counties
101 San Augustine St.
Center, Texas 75935

OR91-128

Dear Ms. Price:

You ask whether certain information regarding the investigation of a district attorney's investigator is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11379.

We have considered the exceptions you claimed, specifically sections 3(a)(3), 3(a)(8), and 3(a)(11) and have reviewed the documents at issue. The documents submitted for our inspection consist of (1) a statement of the subject of the investigation dated October 23, 1990, (2) a transcription of a tape recording between the subject of the investigation and another person, and (3) the statement of another person dated October 10, 1990. You advise that these documents are the only documents which your office possesses which are responsive to the request.

You advise in your brief that the initial request for information was received by your office on December 14, 1990. Your request for an attorney general opinion was dated December 26, 1990, and received in this office on January 2, 1991. Your opinion request was, therefore, not made within ten days of your receipt of the request for information. The exceptions you assert with respect to the information in question are not exceptions which raise a third-party interest which may overcome the heightened presumption of openness resulting from a delay in requesting an attorney general opinion. See Open Records Decision Nos. 552 (1990); 515 (1988). Nor have you made a compelling demonstration, sufficient to overcome the heightened presumption of openness, that the information should not be released. Hancock v. State Bd. of Ins., 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ).

Given the heightened presumption of openness, it is unnecessary to consider the merits of the exceptions you assert, though we note that none of the documents submitted for our inspection contain the kind of information excepted under section 3(a)(11).

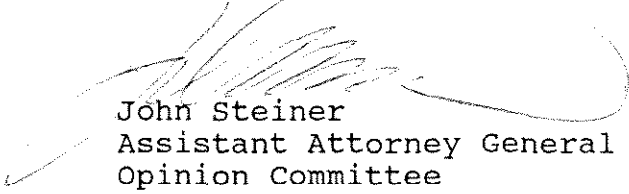
Finally, we note that your brief discusses the possibility that certain information could tend to identify informants or potential witnesses who could be subjected to intimidation. The informer's privilege belongs to the government, not to the informer, and is waivable by the government. Roviaro v. United States, 353 U.S. 53 (1957). Normally, a failure to request an attorney general opinion within the ten-day period would result in a waiver of a discretionary exception such as the informer's privilege. However, a showing that the release of certain information would tend to put certain persons at risk could be the basis of a compelling demonstration that such information should be withheld.

You do not identify such information in the documents submitted for our review, nor is it apparent to us that any such information is contained in these documents. Under the Open Records Act, it is your responsibility to demonstrate that records you wish to withhold are excepted from public disclosure. Attorney General Opinion No. H-463 (1974). For this reason you must explain why an asserted exception applies to a specific document, and if necessary, mark the document to show which portions are within the exception.

If you believe that a compelling demonstration that the information should not be released can be made, please submit these reasons to us within ten days of your receipt of this letter. Otherwise, we have no basis for finding that the presumption of openness has been overcome, and the documents must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-128.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/lcd

Ref.: ID# 11379, 11404, 11536